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not extinguished as against the tenant, appears, at first sight, an authority for such a broad doctrine. *Richardson v. Graham*, [1908] 1 K. B. 39. But this case stands on its own ground and is but a logical conclusion from a recent decision of the House of Lords,<sup>10</sup> following two earlier cases,<sup>11</sup> to the effect that, in order to acquire an easement of light under the Prescription Act,<sup>12</sup> the user need not be of right, but need only be actual for the prescriptive period, and that hence one termor can prescribe for such an easement as against another under a common landlord. Then, if the common ownership does not prevent the acquisition of the easement of light, a merger of the two estates should not operate against the tenant to extinguish the easement already acquired, unless the conveyance gives also the right to possession. This brings out admirably the intrinsic nature of the general principle. If, in order to acquire the easement, the user must be adverse to the land, as in the ordinary easement, one termor cannot prescribe as against another under a common landlord,<sup>13</sup> or as against his landlord.<sup>14</sup> Therefore it results, conversely to the anomalous easement of light, that as unity of seisin will prevent the acquisition of the ordinary easement, so a merger of the two estates in fee simple, though without unity of possession, will work an extinction — a conclusion not without support.<sup>15</sup>

WHETHER A TESTAMENTARY GIFT TO A CLASS INCLUDES A CHILD EN VENTRE SA MÈRE. — In many cases of bequest or devise, where the person or persons entitled to the benefit are to be determined on some particular event, the courts have included a child *en ventre sa mère* when the event actually occurred. In both England and the United States this result seems now to be uniformly reached when the devise or bequest runs to "children" or "grandchildren" as a class,<sup>1</sup> to a "son,"<sup>2</sup> or to one "living" at the particular time.<sup>3</sup> In other cases such children have been included when the words were "issue then living,"<sup>4</sup> one "born,"<sup>5</sup> to J., if B. "hath no son,"<sup>6</sup> or "sons born and begotten."<sup>7</sup> In all these cases nothing is made to turn on whether the particular event is the death of the testator, or that of some other person, or the termination of a period of years.<sup>8</sup> Further, when neither a benefit nor a detriment, a child *en ventre sa mère* has been included when the will ran, to "children,"<sup>9</sup> "issue living,"<sup>10</sup> or "leaving issue."<sup>11</sup> When, however, it is detrimental to the

<sup>10</sup> *Morgan v. Fear*, [1907] A. C. 425.

<sup>11</sup> *Frewen v. Philippy*, 11 C. B. (N. S.) 449; *Mitchell v. Cantrill*, 37 Ch. D. 56.

<sup>12</sup> 2 & 3 Wm. IV, c. 71, § 3.

<sup>13</sup> *Kilgour v. Gaddes*, [1904] 1 K. B. 457.

<sup>14</sup> *Gayford v. Moffatt*, L. R. 4 Ch. 133.

<sup>15</sup> See *Buckby v. Coles*, 5 Taunt. 311, 315; *Clayton v. Corby*, 2 Q. B. 813, 826.

<sup>1</sup> *Crook v. Hill*, 3 Ch. D. 773; *Swift v. Duffield*, 5 Serg. & R. (Pa.) 38.

<sup>2</sup> *Reeve v. Long*, 1 Salk. 227; *Stedfast v. Nicoll*, 3 Johns. Cas. (N. Y.) 18.

<sup>3</sup> *Doe v. Clarke*, 2 H. Bl. 399; *Randolph v. Randolph*, 40 N. J. Eq. 73.

<sup>4</sup> *Laird's Appeal*, 85 Pa. St. 339.

<sup>5</sup> *Trower v. Butts*, 1 Sim. & St. 181; *Baker v. Pearce*, 30 Pa. St. 173.

<sup>6</sup> *Blackburn v. Stables*, 2 Ves. & B. 367.

<sup>7</sup> *Whitelock v. Heddon*, 1 B. & P. 243.

<sup>8</sup> See *Pearce v. Carrington*, L. R. 8 Ch. 969.

<sup>9</sup> *Groce v. Rittenberry*, 14 Ga. 232.

<sup>10</sup> *In re Burrows*, [1895] 2 Ch. 497. *Contra*, *Blasson v. Blasson*, 2 De G. J. & S. 665.

See 9 HARV. L. REV. 349.

<sup>11</sup> *Bedon v. Bedon*, 2 Bailey (S. C.) 231.

child to regard him as born, two American courts have not included him,<sup>12</sup> and a recent English case has reached this result.<sup>13</sup> The House of Lords declared that the cases recognizing a fixed rule of construction, when the words of the will were "living" at the particular time, form a class by themselves—a ruling which by implication seems to require that in other cases the words of the will be construed in their literal sense. More recently the Court of Appeal has decided that the words "born previously to the date of this my will" include a child *en ventre sa mère* at the date of the will, it being for the child's benefit, and states that the rule of construction is fixed in all cases for the child's benefit, not only when the will describes a person "living," but when it describes a person "born." *In re Salaman*, [1908] 1 Ch. 4. In view of the fact that an anomaly has been admitted to the law on this subject—for every child *en ventre sa mère* cannot be regarded as living, and nothing now turns on the length of time since conception<sup>14</sup>—it seems that it is an undue refinement to give the words "living" and "born" a different meaning.

Obviously it is more convenient from a purely legal point of view that there should be a fixed rule in all cases. A tendency in this direction is manifested (1) by the uniformity with which the general words in statutes of descent are held to include a child *en ventre sa mère*,<sup>15</sup> (2) by the now solidified rule that such children are regarded as born, irrespective of the question of benefit, in the case of the Rule against Perpetuities,<sup>16</sup> (3) by the occasional cases where they are considered as born when neither to their benefit or detriment. In view of this tendency, of the rareness of the cases in which it is not for the child's benefit to hold him born, and of the inaccuracy attendant on attributing to a testator intentions in regard to circumstances obviously unforeseen in the will, it would seem, on the whole, better to consider a child *en ventre sa mère* as born in every case of a devise or a bequest to persons to be determined on some particular event.

**THE TERRITORIAL EXTENT AND SITUS OF TRADE-MARKS.**—Relief from infringement of trade-marks or trade-names is usually given upon one of three principles: judicial recognition that the user has become invested with a property right in the mark or name;<sup>1</sup> the presence of features of unfair competition;<sup>2</sup> or deception of the public as to the origin of the goods.<sup>3</sup> The courts recognize a property right in such marks only as are mere arbitrary symbols or in such names as are fanciful and in no way descriptive of the article. If the mark or name is descriptive, unfair competition must be shown. The reason for this distinction lies in the fact that if the originator of the symbol or fanciful name has invented and applied to

<sup>12</sup> *Armistead v. Dangerfield*, 3 Munf. (Va.) 20; *M'Knight v. Read*, 1 Whart. (Pa.) 213.

<sup>13</sup> *Villar v. Gilbey*, [1907] A. C. 139 (any son born in my lifetime). See 19 HARV. L. REV. 624.

<sup>14</sup> *Trower v. Butts, supra*. In *Hall v. Hancock*, 32 Mass. 255, the child was born eight months and seventeen days after the testator's death.

<sup>15</sup> *Smith v. McConnell*, 17 Ill. 135; *Pearson v. Carlton*, 18 S. C. 47.

<sup>16</sup> *In re Wilmer's Trusts*, [1903] 2 Ch. 411. See 16 HARV. L. REV. 601.

<sup>1</sup> *Bass v. Feigenspan*, 96 Fed. 206.

<sup>2</sup> *Shaver v. Heller, etc., Co.*, 108 Fed. 821.

<sup>3</sup> *Samuel v. Berger*, 24 Barb. (N. Y.) 163.